UNITED NATIONS

AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 717

Case No. 759: MUSEIBES

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 18 August 1993, Hasan Mohd Museibes, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA), filed an application requesting the Tribunal, inter alia:

"(a) [To take certain preliminary and procedural measures including the production of certain documents and the hearing of witnesses];

(b) [To order his] reinstatement in [his] former post, Area Welfare Officer [AWO];

(c) [To order the issue of] a testimonial certificate acknowledging [his] achievements, donations and moral behaviour when [he] was AWO; ..., [to issue and to distribute] fieldwide a letter of apology in English and Arabic to rehabilitate [his] reputation; ..., [to sue] the guilty for slander, libel, obstructing and misleading the course of justice;

(d) [To order the payment of] 50 000 $, fifty thousand US dollars, in compensation for the moral and financial harm and damages;

(e) [To raise his] grade and step level to grade 8, step 7, which [he] should normally have gotten so far, had it not been for the biased disciplinary measures;

...

(g) ... that the investigations and testimonies be carried in such a neutral manner and place as to avoid the influence of the Administration on its staff members;

(h) [Payment of a D.S.A. (Daily Subsistence Allowance) for all the days/nights ever since [he] was transferred from Aleppo until [his] transfer back for financial and material harm, and an equal amount for moral and psychosomatic effect and harm so far and in the future."

Whereas the Applicant submitted an addendum to his application on 27 November 1993;

Whereas the Respondent filed his answer on 24 February 1994;

Whereas the Applicant filed written observations on 27 March 1994;

Whereas the Applicant submitted additional observations on 1 May 1994;

Whereas the Respondent submitted additional observations on 29 September 1994;

Whereas the Applicant submitted additional observations on 10 December 1994, 25 May, 20 June, 10 and 12 July 1995;

Whereas, on 19 June 1995, the Respondent submitted an additional statement;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 2 May 1987, as an Area Welfare Officer in the Aleppo/Lattakia Area of Syria, at grade 7, step 1, on a temporary indefinite appointment. With effect from 1 August 1990, the Applicant was transferred to the post of Area Welfare Officer, Central [Homs] Area, and with effect from 4 May 1991, to the post of Clerk B, in the Relief and Social Services Department in the Field Office, Damascus, with protected

grade and salary. With effect from 1 February 1992, the Applicant was transferred back to the Aleppo Area as an Elementary Teacher, at grade 7. The Applicant resigned, with effect from 1 October 1993.

In a memorandum dated 1 November 1987, the Applicant requested a "private meeting" with the Deputy Director of UNRWA Affairs, Syrian Arab Republic (SAR). He wanted to discuss the promotion of a Welfare Worker without his having completed her periodic report, the "discovery of hidden clothes" and "other more serious matters." In a reply dated 8 November 1987, the Deputy Director of UNRWA Affairs, SAR, noted that these matters "are not private but are professional" and indicated "they should be discussed with Field Relief Services Officer to whom I have passed your letter."

In a letter dated 18 May 1988, the Field Personnel Officer, UNRWA, SAR, informed the Applicant that confirmation of his appointment and annual increment would be deferred for three months, in view of unsatisfactory reports on his performance. In a memorandum to the Field Relief Services Officer, SAR, dated 14 June 1988, the Applicant noted that he had "never received or [been] informed of any letter of reprimand, warning or penalty" since his appointment. He requested "a written answer indicating the actual reasons that have led to the aforementioned conclusions in the letter of deferral of confirmation and annual increment, dated 18 May 1988."

In a memorandum dated 13 May 1990, to the Field Relief and Social Services Officer, the Applicant reported an altercation with another staff member. In two Notes for the Record, dated 15 May 1990, the Field Relief and Social Services Officer, SAR, recorded his concerns regarding several incidents involving the Applicant. In a memorandum dated 27 May 1990, to the Acting Director of UNRWA Affairs, SAR, the Applicant noted several accusations that had been made against him and said he had "started to lose my control over my staff." He requested that "an Investigation Committee be sent to the Area to investigate into the charges and substantiate who is to blame."

On 3 July 1990, the Deputy Director of UNRWA Affairs, SAR, wrote to the Applicant in connection with his periodic report, which had been completed on 1 July 1990. The Deputy Director noted that this report "shows an overall substandard rating with emphasis as your inability to supervise staff". He added that he felt "it is best to try you in another work environment." He informed the Applicant, "you will be transferred in the interest of the work to the post of Area Welfare Officer, Central, with effect from 1 August 1990, but with a deferment of your increment for six months." The Deputy Director advised the Applicant to "see this letter as a strong warning that if the situations which existed in Northern Area repeat themselves in Central, then I will have no choice but to consider your termination from the Agency..."

In a memorandum dated 3 March 1991, the Director of UNRWA Affairs, SAR, appointed an ad hoc Performance Review Committee to advise him after reviewing all pertinent documents, and conducting appropriate interviews, whether it considered the Applicant "competent and suitable to fulfil in the future the duties of an Area Welfare Officer..."

In a letter dated 7 March 1991, the Deputy Director of UNRWA Affairs, SAR, informed the Applicant that an ad hoc Performance Review Committee had been convened "to follow up issues concerning your periodic report" and that pending the Committee's findings, his annual increment and confirmation would be deferred. On 20 April 1991, the ad hoc Committee, after outlining several options, recommended that the Applicant be kept in his post on probation for six months or one year and that his performance be evaluated at three month intervals.

On 23 April 1991, the Field Director recorded a decision taken at a meeting between him and the Field Relief and Social Service Officer, to transfer the Applicant to a G6 post with grade protection in the Damascus Field Office, which was one of the options considered by the ad hoc Committee. In a letter dated 25 April 1991, the Acting Field Administration Officer, SAR, informed the Applicant "the Director has decided to transfer you as

from 4 May 1991 from your present post ... to the post of clerk B in the Registration and Eligibility Office with protected grade and salary."

On 2 May 1991, the Applicant requested the Director of UNRWA Affairs, SAR, to reconsider this decision. He noted that he had been transferred without being informed of the reasons, without seeing his periodic report, without "calling me to appear before the ad hoc [Performance] Review Committee to defend myself and present my witnesses and evidence" and without "even giving me the actual findings of the ad hoc Committee". In a memorandum dated 7 May 1991, the Applicant appealed to the Commissioner-General.

In a letter dated 13 May 1991, the Field Director confirmed his decision. He informed the Applicant that his transfer was "the result of an ad hoc investigation" and that he considered it to be "in the interest of the Agency." In a letter dated 30 May 1991, the Director of Personnel informed the Applicant, on behalf of the Commissioner-General, that "the decision taken by the Field is justified and should stand." He offered "to terminate your services in the interests of the Agency" and outlined the entitlements that would consequently accrue to the Applicant. On 9 June 1991, the Applicant lodged an appeal with the Joint Appeals Board (JAB).

On 10 June 1991, the Applicant wrote to the Director of UNRWA Affairs, SAR, to "kindly request that you terminate my services and compensate me ... [as outlined] ... in your letter [of 30 May 1991] as from 10 June 1991." He requested compensation of L.S. 100,000 for his transfer to Central Area, and the return of L.S. 5,000 which he had donated for program purposes. In a further memorandum, dated 1 July 1991, the Applicant noted that he had received no answer to his previous letter "asking for the termination of my services as from 10 June 1991." In a reply dated 3 July 1991, the Deputy Director informed the Applicant, "We acknowledge receipt of your letter of 1 July 1991, which we have transmitted to the Joint Appeals Board, in whose hands the case is after your appeal of 25 May 1991."

In its preliminary report dated 6 December 1991, the JAB recommended "waiving time limits for Appeal Procedures ... in accordance with area staff rule III.3 paragraph 4, and declaring [the Applicant's] case as receivable for further consideration by the Joint Appeals Board." In a letter dated 10 January 1992, the Officer-in-Charge, UNRWA, transmitted a copy of the JAB's report to the Applicant, as well as a copy of his memorandum of the same date to the Chairman of the JAB, which read, in part, as follows:

> "Without dwelling on the jurisdictional aspect, I have looked at the substance and came to the following conclusion ...
>
> (a) [The Applicant] should be transferred back to Aleppo to the temporary post of Elementary Teacher at Grade 7, with priority to be offered the first vacant post that comes up in that area ...
>
> (b) A payment ex gratia of LS 25,000 should be made to [the Applicant] towards any excessive out-of-pocket expenses he may have incurred over and above those which would normally apply in the case of transfers ..."

In a letter dated 15 January 1992, the Applicant was informed that he would be transferred to Aleppo, with effect from 1 February 1992, and paid LS 25,000. On 22 January 1992, in a memorandum to the Chairman of the JAB, the Applicant welcomed the transfer back to his home town but expressed continuing reservations and questions concerning (a) the fact that the JAB "has not dealt with the substance of my appeal, and has not told me the reasons of my disciplinary punishment," (b) the consequences of deferral of annual increments on his grade level; and (c) "the immense financial and material damage and loss," noting the amount he had received as "insignificant and worthless."

In a letter dated 23 February 1992, the Director of UNRWA Affairs, SAR, responded to several issues raised by the Applicant, noting that the sum of 25,000 pounds seemed "appropriate" and would

not be augmented, and that the annual increment deferrals had not been at issue in the appeal and therefore "no action is contemplated to change your status."

On 16 March 1992, the Applicant requested the JAB to consider the substantive merits of his appeal and to grant him "access to all reports of investigations and testimonies which led to my transfer from Aleppo and Homs." On 14 April 1993, the JAB adopted its report. Its recommendation reads as follows:

> "... the Board unanimously makes its recommendations that:
>
> (a) This appeal be dismissed and,
>
> (b) The Administration's decision be upheld with a view to ascertaining that the ex-gratia payment of LS 25,000.00 was adequate and the post offer is properly followed up to finalize reconciling the status of the Appellant under applicable Area Staff Rules and Regulations."

On 13 May 1993, the Commissioner-General, UNRWA, transmitted a copy of the JAB report to the Applicant and informed him, inter alia:

> "... I accept the recommendation and your appeal, therefore, stands dismissed.
>
> The Board has also recommended that the Administration ascertain whether the ex-gratia payment of LS 25,000.00 is adequate. I must advise you that since this amount was paid to you 'ex-gratia', i.e. without any obligation to do so, I do not believe that such an exercise is required. Finally, the Board has recommended that the question of a post to be offered to you be properly followed up. I will, accordingly, ask the Director of UNRWA Affairs in the Syrian Arab Republic to look into this and advise you of the results in due course."

On 18 August 1993, the Applicant filed with the Tribunal the application referred to earlier.

In a letter dated 1 September 1993 , the Applicant informed the Director of UNRWA Affairs, SAR, "I am, under undue pressure and unbearable prejudice, compelled to tender my resignation as of 1 October 1993," citing a number of issues. In a letter dated 23 September 1993, the Officer-in-Charge, UNRWA, SAR, acknowledged the Applicant's resignation, noting "the Agency does not accept the various allegations made by you in connection with your decision to separate from the Agency's service."

Whereas the Applicant's principal contentions are:

1. Ever since the Applicant reported the discovery of hidden clothing, he has been subjected by the Administration to a campaign against him.

2. The Applicant was transferred as a result of an investigation in which he did not have an opportunity to defend himself, and a resulting report to which he was not given an opportunity to respond.

3. The action taken by the Administration to transfer the Applicant back to Aleppo, with priority for placement, and the ex gratia payment made to him do not adequately compensate him for the injury he suffered.

Whereas the Respondent's principal contentions are:

1. The Applicant's claim is moot. By transferring the Applicant back to Aleppo, with priority of placement and an ex gratia payment of LS 25,000, the Respondent has provided the relief requested. The Applicant is seeking punitive measures, which are not within the scope of administrative procedures.

2. The decision to transfer the Applicant was entirely proper and within the Respondent's discretion. The Applicant has presented no evidence that the decision was motivated by prejudice or constituted an abuse of discretion.

The Tribunal, having deliberated from 7 to 28 July 1995, now pronounces the following judgement:

I. The Tribunal notes that the Applicant asks for a number of additional documents including his personal file. He has now received it, after some delay. In the view of the Tribunal, the other documents and the oral hearing he has requested are not necessary for the Tribunal to decide the case.

II. The main complaint of the Applicant appears to be that he was not informed properly, or at the right time, why he was being transferred, first from Aleppo to Homs and again from Homs to Damascus. In a letter dated 2 May 1991, to the Director of UNRWA Affairs, he expressed his dissatisfaction over having been transferred without: (1) mentioning to him the reasons for the transfer, (2) showing him the periodic reports on his work, (3) calling him to appear before the ad hoc committee set up to assess his usefulness to UNRWA and (4) informing him of the findings of the committee. He pursued his attempts to discover what he thought to be the "substance proper" behind the action of the Respondent in transferring him twice in less than a year. As time passed, his accusations against many officials in UNRWA increased and he felt himself a victim of malice and intrigue. The JAB was presented with some of these matters, and it briefly commented that it was not a "forum for settling personal vendettas".

III. The Tribunal examined the plethora of representations made by the Applicant, quite frequently in instalments. His suspicion that some person or persons, dissatisfied with the discovery of their wrongdoing i.e. theft of some clothes meant for relief purposes, and/or perhaps envious of some donations he had offered, manipulated his transfer with a view to getting rid of him from UNRWA altogether, is ill founded. This is so, despite the fact that there was much ill-feeling among the people with whom he was working.

IV. The evidence before the Tribunal establishes that the difficulty that arose between the parties was essentially due to the way each of them considered the Applicant's two transfers. The Applicant thought of them a disciplinary measure while the Respondent treated them both as a warning and as an effort to indicate to the Applicant how best his services could be used for the benefit of UNRWA. This fundamental difference in approach colours the interpretations given by the parties to the various developments that took place in this case. The Respondent was firm in his view that transfers and postings could be made entirely at his discretion and in the interest of the organization and that he had, in this instance, "protected the Applicant's grade and salary." The Applicant on the other hand, strongly felt that the transfer with apparent reduction in grade, even with protected salary, implied a concealed disciplinary measure.

V. The record shows that the Applicant was well aware of the growing dissatisfaction in the Agency with his work and attitude. Not only was his increment withheld on several occasions, but he was told, in no uncertain terms, that unless his performance improved, the Respondent would "have no choice but to consider your termination from the Agency". This was communicated to him on 3 July 1990. In addition, several strong warnings were given to him.

VI. The concern of the Respondent about the future of the Applicant was evident when the Director of UNRWA Affairs, Syrian Arab Republic, faced with uneven and at times contradictory reports on the Applicant's work, appointed on 3 March 1991, an ad hoc Performance Review Committee. This Committee was asked to "review all documents in [the Applicant's] file, to interview former and present supervisors of [the Applicant] and to give me ([Director of UNRWA Affairs], Syria) a recommendation mainly on whether the Committee considers [the Applicant] competent and suitable to fulfil

in the future the duties of an Area Welfare Officer, keeping in mind the obvious requirements of a person in such a post to be co-operative and able to work with the full confidence of supervisors, colleagues, subordinates and the Palestinian Refugee clients". The establishment of this Committee was, in the view of the Tribunal, a serious attempt by the Respondent to assess the Applicant's capacity and cannot be confused with any actual or contemplated disciplinary measure. The Committee was an entirely internal body established to obtain an accurate and up-to-date assessment of the Applicant's performance and his future potential. The Tribunal notes that the Applicant did not appear or give evidence before the Committee. Moreover, it appears that he was not given an opportunity to comment on the report of the Committee after it was issued and this constituted a procedural irregularity.

VII. The ad hoc Performance Review Committee met on 20 April 1991, to analyze the evidence of the many witnesses whom it had examined and to finalize a recommendation. After considering various possibilities, it suggested that the Applicant should be "on probation for another six months or a year and have proper detailed evaluation during this period".

Action was accordingly taken and the Applicant was informed on 25 April 1991 that he would be transferred to the Field Office at Damascus with "protected grade and salary". The Applicant lodged an appeal with the JAB.

VIII. Following the JAB's initial determination that the Applicant's appeal was receivable, on 10 January 1992, the Officer-in-charge, Headquarters, informed the Applicant that he would be transferred back to Aleppo "to the post of Elementary Teacher at Grade 7, with priority to be offered the first vacant post that comes up in that area (as an English Teacher, preparatory cycle, at Grade 9)". The Applicant was also given an ex-gratia payment of LS

(Syrian pounds) 25,000 "towards any excessive out-of-pocket expenses he may have incurred over and above those which would normally apply in the case of transfers".

The Applicant expressed appreciation of these decisions but stated in a memorandum of 22 January 1992, to the Chairman of the JAB, that the JAB had not dealt with "the substance of my appeal and has not told me the reasons of my disciplinary punishment". He also wanted to know what would happen to his increments which had been withheld and indicated the ex-gratia payment of LS 25,000 was "insignificant and worthless".

IX. The JAB reviewed these developments and concluded that the Applicant's appeal should be dismissed. It recommended in April 1993 "that the Administration's decision be upheld with a view to ascertaining that the ex-gratia payment of LS 25,000 was adequate and the post offer is properly followed up to finalize reconciling the status of the [Applicant] under applicable area Staff Rules and Regulations". The Respondent interpreted this recommendation as a request for an increase in the ex-gratia payment and refused to accede. The Respondent confirmed his view that all the transfers of the Applicant had been made in the interest of the Agency. The Applicant resigned on 1 October 1993, apparently still dissatisfied, even though his grade seemed to have been raised and increments allowed on the basis of recent reports on his work.

X. The Tribunal considers that the Respondent's actions in transferring the Applicant from place to place were taken in good faith and were not tainted by prejudice or any other extraneous factors. On the other hand, the Respondent's failure to share the findings of the ad hoc Performance Review Committee with the Applicant, and to give him an opportunity to respond to them, was unfair to the Applicant.

The Tribunal notes that if the Respondent had "looked at the substance" of the case more carefully at an early stage, much of the

complication that followed could have been avoided, and the Applicant would have been spared some difficulties and uncertainty.

There is evidence that the Applicant incurred financial losses attendant on frequent transfers at short intervals. In the circumstances and in view of the procedural irregularity noted above, the Tribunal considers that the Applicant is entitled to some monetary relief, which the Tribunal assesses at US$2,500.

XI. In the light of the above, the Tribunal orders the Respondent to pay the Applicant a sum of US$2,500.

All other pleas are rejected.

(Signatures)

Samar SEN
Vice-President, presiding

Hubert THIERRY
Member

Francis SPAIN
Member

Geneva, 28 July 1995

R. Maria VICIEN-MILBURN
Executive Secretary